IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7139 OF 2002

Gangadhar Shankar Mogal... ..... Petitioner.

Versus

Bhaskar Motiram Mogal & Ors..... Respondents.

Mr. H.E.Palwe for the Petitioner.

Ms. V. Mhaispurkar for Respondent No.1.

CORAM : S. C.DHARMADHIKARI, J.

DATED : 20TH DECEMBER, 2004.

P.C.:

The Additional Commissioner, Nasik Division, Nasik has rejected the revision application of the Petitioner as also the review petition despite being aware that during the pendency of the proceedings before him, a Civil Suit, namely, Civil Suit No. 165 of 1998 has been instituted by the present Petitioner to which contesting Respondent No.1 and others are party Defendants. The property in question is the subject matter of the civil suit. The Petitioner is asserting his title in respect of the same. Ultimately, it is for the civil court to decide the issue after examining the materials placed before it

by the parties. It was not open to the Additional Commissioner to have gone into all these aspects when it was brought to his notice that the civil suit is pending.

2. The apprehension expressed by the learned Counsel appearing for the contesting Respondent that the civil court would not take into account the materials on which the Sub-Divisional Officer has based his finding is misplaced in as much as it will be equally open for the contesting Respondent to prove by leading independent evidence that the property in question does not belong to the Petitioner / Plaintiff.

3. Leaving all contentions on merits of both sides open, the present petition is disposed of. Ad-interim order granted in terms of prayer clause (b) to continue till the disposal of the civil suit.

Sd/-

(S. C. DHARMADHIKARI,J.)